

Request for Reconsideration:

By this amendment, Applicants are amending claims 1, 9, and 67. Applicants respectfully submit that these amendments do not add new matter and are supported by the specification, as filed. See, e.g., Appl'n, Paras. [0097]; **Fig. 28**. In addition, claims 23-25 and 27-33 are withdrawn as directed to a non-elected invention. Accordingly, claims 1-12 and 67-69 are under consideration for prosecution on the merits, of which claim 1 is independent. Applicants respectfully request that the Examiner enter these amendments and reconsider the above-captioned patent application in view of the foregoing amendments and the following remarks.

Remarks:

1. Rejections.

Claims 1-12 and 67-69 stand rejected under 35 U.S.C. § 112, ¶ 2, as allegedly indefinite for failing to particularly point out and distinctly claims the subject matter which Applicants regard as the invention. Claims 1-3, 5-8, 12, 68, and 69 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Patent Application Publication No. US 2005/0192604 A1 to Carson et al. (“Carson”), in view of Patent Application Publication No. US 2002/0161383 A1 to Akin et al. (“Akin”), and further in view of Patent No. US 5,456,714 A to Owen. In addition, claims 4, 9, and 67 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, in view of Akin and Owen, and further in view of Patent Application Publication No. WO 00/24339 to Berreklouw; claims 4 and 9 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, in view of Akin and Owen, and further in view of Patent No. US 6,554,848 B2 to Boylan et al.; and claims 10 and 11 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, in view of Akin and Owen, and further in view of Patent No. US 6,814,750 B2 to Kavteladze et al. Applicants respectfully traverse.

2. Indefiniteness Rejections.

The Office Action rejects claims 1-12 and 67-69 as allegedly indefinite for failing to provide antecedent basis for the claim terms: “base” and “pair of arms.” Accordingly, claim 1 is amended to describe “a base.” In addition, claim 67 is amended to depend from claim 9 and describe a “pair of legs.” Thus, Applicants respectfully submit that claims 1-12 and 67-69 comply with the requirements of 35 U.S.C. § 112, ¶ 2. Therefore, at least for this reason, Applicants respectfully request that the Examiner withdraw the indefiniteness rejections of claims 1-12 and 67-69.

3. Obviousness Rejections.

The Office Action rejects claims 1-12 and 67-69 as allegedly rendered obvious by the cited references. In order to establish a prima facie case of obviousness, the Office Action must fulfill three (3) basic criteria. MPEP 2142 and 2143. First, there must be some clear and explicit articulation of the reason(s) why the claimed invention would have been obvious, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as proposed by the Office Action. Second, there must be a reasonable expectation of success. MPEP 2143.02. To satisfy this criterion, the Office Action must demonstrate that “one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.” MPEP 2143.02. Third, the cited references or the knowledge generally available to those of ordinary skill in the art must disclose or suggest all of the claim limitations. MPEP 2142. For the reasons set forth below, the Office Action fails to maintain a prima facie case of obviousness.

a. Independent Claim 1.

The Office Action rejects claim 1 as allegedly rendered obvious by Carson in view of Akin and Owen. The Office Action maintains that Akin discloses an elliptical cross section where the channel connects to the saddle, as shown below:

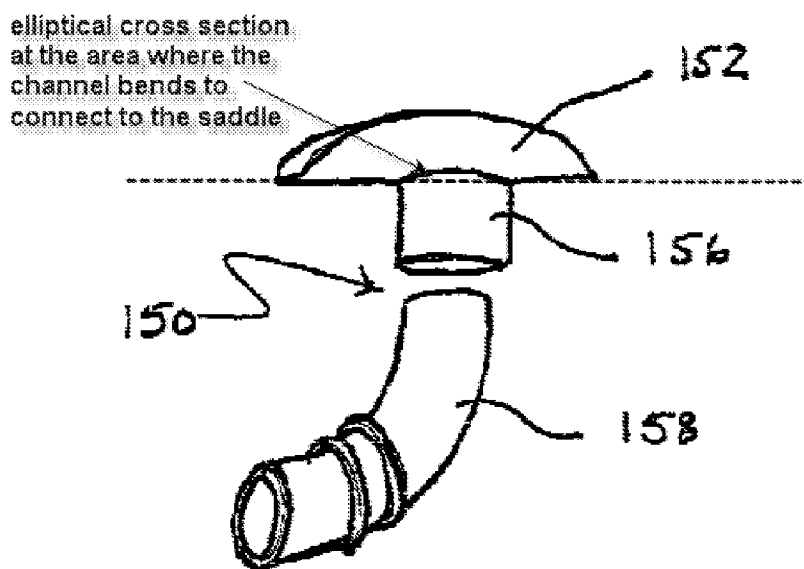


FIG. 13

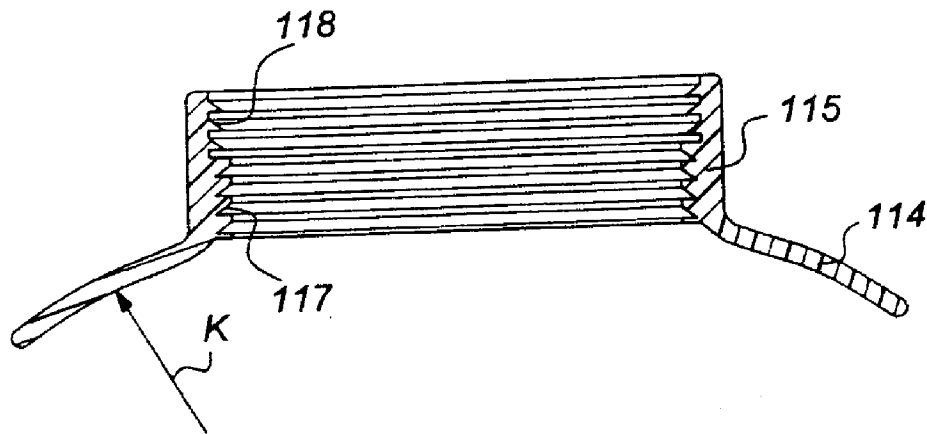
Office Action, Page 6, Lines 4-8. Applicants respectfully submit that channel 156 clearly has a circular cross-section along the dotted line depicted in the Office Action.

Nevertheless, to expedite prosecution, Applicants are amending claim 1 to describe that the first end of the channel has “a substantially elliptical cross-section of a first width in the first direction” and the second end of the channel has “a substantially circular cross-section of a second width in the first direction,” wherein the first width is greater than the second width. (Emphases added). Akin fails to disclose or suggest that the width of a first end of channel 156 at segment 152 is greater than a width of a second end of channel 156 into which tubular member 158 may be inserted. Accordingly, Akin, whether taken alone or in combination with Carson and Owen, fails to disclose or suggest all of the limitations of amended claim 1. Therefore, at least for this reason, Applicants respectfully request that the Examiner withdraw the obviousness rejection of independent claim 1, as amended.

b. Dependent Claims 2-12 and 67-69.

Each of claims 2-12 and 67-69 ultimately depends from independent claim 1, as amended. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” MPEP 2143.03 (citations omitted). Therefore, at least for this reason, and in view of the foregoing remarks with regard to amended claim 1, Applicants respectfully request that the Examiner withdraw the obviousness rejections of dependent claims 2-12 and 67-69.

In addition, the Office Action rejects claims 9 and 67 as allegedly rendered obvious by Carson in view of Akin and Owen, and further in view of Berreklouw. Claim 9, as amended, describes that “said pair of legs are configured to bias said clamping portion towards said saddle in the clamped position.” Claim 67, as amended, which depends from claim 9, further describes that “said pair of legs are connected to said channel at said flange formed substantially at said second end of said channel.” The Office Action acknowledges that Carson in view of Akin and Owen fail to disclose a pair of legs on the tissue clamp. Office Action, Page 8, Lines 21, 22. Nevertheless, the Office Action contends that Berreklouw’s outer flange 114 corresponds to the claimed pair of legs, as depicted in Berreklouw’s **Fig. 5** below.



Office Action, Page 9, Lines 1-3. Nevertheless, Berreklouw makes clear that outer flange 14, 114 corresponds to the claimed clamping portion that directly engages the conduit, and outer flange 14, 114 is a fixed shape having a radius of curvature K that is essentially equal to a radius of curvature R of vessel 2. Berreklouw, Page 21, Line 21-Page 22, Line 6. As shown in Berreklouw's **Fig. 6**, arms (*i.e.*, inner flange) 11, 111 conform to the radius of curvature K of outer flange 14, 114, to secure target vessel wall 2 between inner flange 11, 111 and outer flange 14, 114. Berreklouw, Page 25, Lines 7-13. Berreklouw, however, fails to disclose or suggest any structure that biases outer flange 14, 114 toward inner flange 11, 111. Thus, Akin, whether taken alone or in combination with Carson, Owen, and Berreklouw, fails to disclose or suggest all of the limitations of amended claims 9 and 67. Therefore, at least for this additional reason, Applicants respectfully request that the Examiner withdraw the obviousness rejections of dependent claims 9 and 67, as amended.

Conclusion:

Applicants maintain that the above-captioned patent application, as amended, is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representative, we would welcome the opportunity to do so.

Applicants believe that no fees are due as a result of the submission of this responsive amendment. Nevertheless, in the event of any variance between the fees determined by Applicants and the fees determined by the PTO, please charge or credit any such variance to the undersigned's **Deposit Account No. 02-0375**.

Respectfully submitted,
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